

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITIZENS INSURANCE COMPANY,

Plaintiff/Counterdefendant-  
Appellee,

V

RONALD J. POSLUNS and SHARON M.  
POSLUNS,

Defendant/Counterplaintiff/Third-  
Party Plaintiffs-Appellants,

and

ALLMERICA FINANCIAL CORPORATION,  
MARVIN OKUN AGENCY, INC., JAMES R.  
MCAULIFFE, JOSEPH W. MCDOUGALL,  
MARVIN OKUN, MAC THOMAS, BARBARA  
MEYER, JAMES SLUTER, P.J. HERNDON,  
DEE SMIT, JEFFREY B. HARDING, JOHN  
CALNIN, MARY BOYCE-BERRY, ROBERT R.  
REKIEL, GARY SCHELLHASE,  
SCHELLHASE, REKIEL, AND MITCHAM,  
KAREN LIVINGSTON-WILSON, ROB W.  
KIMBREL, GARY BARTOSIEWICZ,  
BARTOSIEWICZ & KIMBREL, P.C., PHILIP G.  
DIETRICH, DIETRICH, SMITH, HOWARD &  
VANDERROEST, P.C. and JANICE BOWEN,

Third-Party Defendants-Appellees,

and

100 DOES,

Third-Party Defendants.

UNPUBLISHED

October 8, 2002

No. 223832

Van Buren Circuit Court

LC No. 98-044142-CZ

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Before: Murphy, P.J., and Hood and Murray, JJ.

PER CURIAM.

Defendants, the Posluns, appeal as of right from the trial court's order granting plaintiff's motion for security for costs and dismissing defendants' countercomplaint. We affirm.

This case began when plaintiff, an insurance company, filed a petition for injunctive relief and a restraining order against defendants. Defendants had two insurance policies with plaintiff. Defendants sought to have plaintiff assume their defense in litigation filed by landlords against defendants as tenants and also presented an insurance claim based on pesticide contamination.<sup>1</sup> Plaintiff alleged that, after it denied the requests, defendants began to harass its employees, both at work and at their homes, with abusive, repetitive, and sometimes threatening telephone calls. After the entry of a temporary restraining order, the parties stipulated that all future communications would be made in writing to a designated individual, subject to certain exceptions.

Shortly after plaintiff filed its petition, defendants filed a countercomplaint and third-party complaint alleging different counts against plaintiff, its employees, attorneys, and other affiliates. The trial court dismissed each of those counts and awarded sanctions, costs, and attorney fees in favor of some of the third-party defendants against defendants. All remaining claims against plaintiff were ultimately dismissed after the trial court granted plaintiff's motion for security for costs.<sup>2</sup> This appeal followed.

Defendant<sup>3</sup> first alleges that the trial court abused its discretion when it ordered him to post security for costs. We disagree. A court may require a party to post security for costs if it appears reasonable and proper. MCR 2.109(A). The decision to require a security bond is reviewed for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). A security bond is generally not required unless a substantial reason for imposing one exists. *Id.* A substantial reason exists when there is a tenuous legal theory of liability or where there is good reason to believe that a party's allegations are groundless and unwarranted. *Id.* at 331-332.

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<sup>1</sup> The underlying litigation addressing the pesticide application was dismissed by the trial court due to defendants' violation of discovery orders, and the dismissal was affirmed on appeal. *Posluns v Griffin Pest Control, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued June 27, 2000 (Docket No. 215709).

<sup>2</sup> The trial court indicated that it would order that security for costs be provided within fourteen days. However, defendant Ronald Posluns had failed and refused to pay prior orders for sanctions. Defendant Ronald Posluns urged the court to dismiss the litigation because he refused to pay any sanctions or security for costs. Based on the representations of continued noncompliance, the litigation was dismissed.

<sup>3</sup> Review of the record reveals that defendant Sharon Posluns accepted the mediation, now known as case evaluation, award and received a judgment as a result of plaintiff's acceptance. MCR 2.403. Based on her acceptance, her case is over. *CAM Constr v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 557; 640 NW2d 256 (2002). Accordingly, we will only consider the issues on appeal as raised by defendant Ronald Posluns.

Review of the record reveals that defendant had a history of filing claims and motions with full knowledge that they were without merit. The trial court had imposed sanctions on defendant for filing harassing and frivolous claims against other parties. Defendant informed the trial court that he would not comply with any of the prior orders imposing sanctions and had no intention of posting security for costs. Under the circumstances, the trial court did not abuse its discretion by imposing security for costs. Furthermore, the trial court did not abuse its discretion by dismissing the case when defendant unequivocally represented that he would not post any security, and requested the dismissal upon notice of the security for costs requirement. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 273; 463 NW2d 254 (1990).

Defendant next alleges that the trial court erred when it granted summary disposition with regard to whether plaintiff had a duty to defend defendant in lawsuits brought by former landlords. We disagree. Construction and interpretation of a contract presents a question of law that an appellate court reviews de novo. *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The lawsuits involved claims for a personal protection order and damages for breach of a lease. Because the lawsuits did not allege an “occurrence” as defined by the policies, there was no coverage under the policies and, accordingly, no duty to defend.<sup>4</sup> *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 450; 550 NW2d 475 (1996). Therefore, summary disposition of those claims was proper.

Defendant next alleges that his constitutional rights were violated because the county clerk required that payments for fees by in propria persona litigants be paid by cash, money order, or official bank check. This claim was rejected in an original action for superintending control before this Court. See *In re Posluns*, unpublished opinion per curiam of the Court of Appeals, issued July 20, 2002 (Docket No. 221123).

Defendant next alleges that the trial court erred when it declined to hold that plaintiff and its employee attorneys were engaged in the unauthorized practice of law. We decline to address this argument because defendant has given cursory treatment to the issue with little or no citation to supporting authority. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

Defendant next alleges that the trial court improperly granted summary disposition with regard to the allegations raised in the countercomplaint. We disagree. Michigan does not recognize a separate cause of action for breach of a contract’s implied covenant of good faith and fair dealing. *Ulrich v Federal Land Bank*, 192 Mich App 194, 197; 480 NW2d 910 (1991). Dismissal of the claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USC 1962(c) was proper because defendant failed to identify particular facts in support of the claim and to satisfy the causation requirement. *Forsyth v Humana, Inc*, 114 F3d 1467, 1481 (CA 9, 1997).

Defendant next alleges that the trial court abused its discretion by imposing sanctions costs, and attorney fees and did so without holding an evidentiary hearing. We disagree.

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<sup>4</sup> The allegation that a landlord reported that defendant threatened to slit her throat does not invoke the accidental bodily injury or property damage provision.

Imposition of a sanction pursuant to MCR 2.114 is mandatory upon a finding that a pleading was signed in violation of the court rule, and the trial court's decision is reviewed under the clearly erroneous standard. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). Third party practice is permitted where a third party may be liable to the defending party for all or part of the plaintiff's claim. MCR 2.204(A). Because plaintiff's petition only sought injunctive relief, there was no foundation for the filing of the third-party complaint against third party defendants, Kimbrel, Bartosiewicz, or their law firm. See *Tanelian v Brooks*, 202 Mich App 304, 308; 508 NW2d 189 (1993). Under the circumstances, the trial court's sanction was appropriate.<sup>5</sup>

Affirmed.

/s/ William B. Murphy  
/s/ Harold Hood  
/s/ Christopher M. Murray

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<sup>5</sup> While defendant may have taken issue with the request for sanctions, a request for an evidentiary hearing regarding the amount of sanctions was never requested.